

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number

Q76703

Mail Stop AF
 Commissioner for Patents
 P.O. Box 1450 Alexandria, VA 22313-1450

Application Number

10/628,286

Filed

July 29, 2003

First Named Inventor

Sadato AKAHORI

Art Unit

2624

Examiner

Alex Kok Soon
LIEW

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal

The review is requested for the reasons stated on the attached sheets.

Note: No more than five (5) pages may be provided.

☒ I am an attorney or agent of record.

Registration number 60,835



Signature

Quadeer A. Ahmed

Typed or printed name

(202) 293-7060

Telephone number

March 10, 2008

Date

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q76703

Sadato AKAHORI

Appln. No.: 10/628,286

Group Art Unit: 2624

Confirmation No.: 5383

Examiner: Alex Kok Soon LIEW

Filed: July 29, 2003

For: METHOD AND APPARATUS FOR IMAGE PROCESSING

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated September 10, 2007 and Advisory Action dated February 27, 2008, Appellants file this Pre-Appeal Brief Request for Review. A Notice of Appeal is being concurrently filed with this Pre-Appeal Brief.

Appellants turn now to the rejections at issue: Claims 1-14 are all the claims pending in the application. An IDS was filed July 29, 2003¹.

Allowable subject matter

The Examiner has indicated that claims 2 and 7-10 would be allowable if rewritten in independent form.

¹ Appellants respectfully request the Examiner to initial the references cited in the Information Disclosure Statement filed on July 29, 2003, as previously requested by the Appellants in the Amendment filed on July 11, 2007, and the Response filed on January 9, 2008 (hereinafter, "the January 9th Response"). The newly cited reference (U.S. Patent No. 5,995,668 to Corset *et al.*) relied upon to reject independent claims 1 and 3 has not been cited on the 'Notice of References Cited' form in the Office Action. Accordingly, Appellants respectfully request the Examiner to cite the Corset reference on the PTO-892 form.

Claim Rejections – 35 U.S.C. § 103

Claims 1 and 3 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,995,668 to Corset *et al.* (“Corset”) in view of U.S. Patent No. 6,188,787 to Ohmae *et al.* (“Ohmae”). Claims 4 and 6 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Corset in view of Ohmae, and further in view of U.S. Patent No. 4,731,859 to Holter *et al.* (“Holter”). Claim 5 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Corset, Ohmae, and Holter and further in view of U.S. Patent No. 6,418,238 to Shiratani *et al.* (“Shiratani”). Claims 11 and 12 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Corset and Ohmae and further in view of U.S. Patent No. 7,039,232 to Nagarajan *et al.* (“Nagarajan”). Claims 13 and 14 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Corset and Ohmae and further in view of U.S. Patent No. 6,603,877 to Bishop. For *at least* the following reasons, Appellants respectfully traverse the rejections.

As an initial matter, Appellants point out that the arguments submitted below were previously submitted in the January 9th Response. In the Advisory Action, however, the Examiner did not respond to these arguments².

Appellants respectfully submit that that MPEP § 706.07(f) dictates that “[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it” (emphasis added). Here, Corset was cited for the first time in the September 10, 2007 Final Office Action, and the Examiner did not respond to the Appellants arguments (submitted in the January 9th Response) regarding the Corset reference in the Advisory Action. Such a response (or lack thereof) by the Examiner goes against the examination guidelines set forth in the MPEP, as pointed out above.

It is the Appellants position that the arguments submitted in the January 9th Response distinguishes the claims from the prior art of record, and thus, place the application in immediate condition for allowance. The arguments are reproduced below for convenience of the Review Panel.

² The Examiner only responds to the arguments regarding the finality being premature (see January 9th Response, pages 3 and 4, and Advisory Action, page 2).

Claim 1

Appellants respectfully submit that claim 1 is patentable over the cited references. For example, claim 1 relates to an image processing method. The image processing method comprises, *inter alia*, generating object regions by dividing an image into objects, and generating a plurality of block regions each having a **predetermined** number of pixels and having a smaller area than any one of the object regions by dividing each of the generated object regions, and totaling up occurrence frequency of **each of the types of the respective block regions in each of the object regions**.

The Examiner contends that FIG. 6 and col. 3, lines 1-3 of Corset disclose the claimed generating of the object regions and the generating of the plurality of the blocked regions. The Examiner acknowledges that Corset does not disclose the claimed totaling up of occurrence frequency. The Examiner, however, relies on Ohmae, specifically col. 2, lines 52-55 of Ohmae, to disclose this feature. Appellants respectfully submit that Corset and Ohmae, alone or in combination, do not disclose the above-noted features of claim 1.

For example, Corset does not disclose generating a plurality of block regions each having a **predetermined** number of pixels. The Examiner alleges that in FIG. 6 of Corset, the two regions in the second tier of the partition tree (PT) correspond to the claimed object regions, and the four regions in the middle tier of the PT block correspond to the claimed block regions (Office Action, page 2). Appellants respectfully submit that the four regions in the middle tier of the PT block do not disclose or suggest the claimed block regions.

Corset discloses that the PT is created in a partition topology definition sub-step. The partition topology definition sub-step includes the **determination** of additional partitions (e.g., the middle tier) **on the basis of motion and texture criteria** (e.g., *see* Corset, col. 1, lines 58-63, col. 8, lines 13-25, and col. 9, lines 26-41). That is, the middle tier of the PT, allegedly the claimed block regions, **does not and cannot** have a **predetermined** number of pixels, since it is based on the subject image's motion and texture. Ohmae's device would not know how to divide the image into additional partitions (resulting in the middle tier) without **determining** the subject image's motion and texture characteristics. Thus the additional partitions do not have a **predetermined** number of pixels. On the other hand, claim 1 recites that the claimed block regions have a **predetermined** number of pixels.

Therefore, Corset does not disclose or suggest generating a plurality of block regions each having a **predetermined** number of pixels as recited in claim 1.

Furthermore, Ohmae does not disclose or suggest totaling up occurrence frequency of **each of the types of the respective block regions in each of the object regions** as set forth in claim 1. Ohmae is directed to an image recognition method and device which reliably detects all nonreproducible documents and whose detection capabilities are not compromised by tampering (Ohmae, col. 2, lines 8-13). In Ohmae, the presence of a given mark, which is the target item to be detected among image data under examination, is recognized. Ohmae states that a feature count is extracted from the reference pattern (of the given mark) and the image data for purposes of image recognition. The Examiner relies on this "feature count" to disclose the claimed totaling up occurrence frequency of each of the types of the respective block regions in each of the object regions.

The feature count is explained with reference to FIGS. 11-14 of Ohmae. Ohmae discloses that a counter C calculates **the number of black pixels in each of the four 6x6 pixel areas** (Areas 1-4) shown in FIG. 11. The number of black pixels is equivalent to the feature count in Ohmae (Ohmae, col. 8, lines 52-58). However, an occurrence frequency of **each of the colors of the pixels** in the four 6x6 pixel areas is not totaled in Ohmae. **Only** the black pixels are accounted for. As such, Ohmae does not explicitly disclose or implicitly suggest totaling up occurrence frequency of **each of the types of the respective block regions in each of the object regions**.

In light of the discussion above, Appellants respectfully submit that claim 1 is patentable over any conceivable combination of Corset and Ohmae. Accordingly, Appellants request withdrawal of the 35 U.S.C. § 103(a) rejection of claim 1.

Claim 3

Claim 3 recites features similar to those discussed above with respect to claim 1. For example, claim 3 recites an image processing apparatus comprising, *inter alia*, object region extraction means for generating object regions by dividing an image into objects, block region generation means for generating block regions each having a **predetermined** number of pixels and having a smaller area than any one of the object regions, by dividing each of the generated object regions, object recognition means for recognizing the type of each of the objects by **totaling up occurrence frequency of each of the types of the block regions in each of the object regions**. As such, Appellants submit that claim 3 is patentable for *at least* reasons similar to, but not necessarily coextensive with, those given above with respect to claim 3.

Claims 4 and 6

Claims 4 and 6 depend from claim 3. Since Holter does not cure the deficient teachings of Corset and Ohmae with respect to claim 3, Appellants respectfully submit that claims 4 and 6 are patentable *at least* by virtue of their dependency.

Claim 5

Claim 5 depends from claim 3. Since Shiratani does not cure the deficient teachings of Corset, Ohmae, and Holter with respect to claim 3, Appellants respectfully submit that claim 5 is patentable *at least* by virtue of its dependency.

Claims 11-12

Claims 11-12 depend from claim 1 and 3. Since Nagarajan does not cure the deficient teachings of Corset and Ohmae with respect to claims 1 and 3, Appellants respectfully submit that claims 11 and 12 are patentable *at least* by virtue of their dependency.

Claims 13-14

Claims 13-14 depend from claim 1 and 3. Since Bishop does not cure the deficient teachings of Corset and Ohmae with respect to claims 1 and 3, Appellants respectfully submit that claims 13 and 14 are patentable *at least* by virtue of their dependency.

Conclusion

In view of the above, Appellants respectfully request the withdrawal of the 35 U.S.C. § 103(a) rejections of the pending claims.

Respectfully submitted,



Quadeer A. Ahmed
Registration No. 60,835

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

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